IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 17382 of 2004

Between:

T. Balaramaiah, S/o. Janaki Ramaiah,
R/o. 16-1891/2, Srinivasa Agraharam, Nellore Town.

..... PETITIONER

AND

1 The Superintendent of Police, Nellore.
2 The Environmental Engineer, A.P. Pollution Control Board, Nellore.
3 The Commissioner, Nellore Municipality, Nellore.
4 M.V. Satyanrayana Gupta, S/o. Venkateswarlu, Proprietor,
Sri Venkateswara Steels & Cement, Mini Bye Pass Road, Sreenivasa

Agraharam, Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, writ or direction more particularly a Writ of Mandamus under Article 226 of Constitution of India, declaring the inaction of respondents in taking steps to arrest the noise that is being caused by the 4th respondent while loading and unloading the steel rods in the shop located besides the house of the petitioner bearing D.No. 16-1891/2, Sreenivasa Agraharam, Nellore Town despite making several representations as illegal, arbitrary, unjust, unconstitutional and violative of Articles 14 and 21 of Constitution of India and consequently direct the respondent forthwith to take steps to stop the noise pollution.

Counsel for the Petitioner:MR.P.SRIDHAR REDDY

Counsel for the Respondent No.1: GP FOR HOME

Counsel for the Respondent No.2: Mr.S.V.Bhat
Counsel for the Respondent No.3: The Govt. Pleader for Municipalities.
Counsel for the Respondent No.4: Ms.A.Bala Bharathi.

The Court at the admission stage made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

This petition is filed by the petitioner seeking a writ of mandamus declaring the inaction of the respondents in taking steps to arrest noise alleged to be causing by the fourth respondent while loading and unloading steel rods in the shop located besides his house bearing D.No.16-1891/2, Srinivasa Agraharam, Nellore town despite several representations as illegal and arbitrary. Notices were issued and counter affidavit has been filed by the respondent No.4 and status report has been submitted by the second respondent.

Petitioner's case is that the fourth respondent established a steel and cement retail shop under the name and style of Venkateswara Steel and Cement in the adjoining premises of his house and has encroached upon 100 ft. road for the purpose of storing steel rods. Fourth respondent is causing deafening noise while loading and unloading steel rods particularly during night hours. Petitioner alleged that along with him, his wife aged about 68 years and elder brother aged 75 years are residing along with children and grand children. Petitioner is alleged to be subsisting on rents received by letting out five residential portions in the house. But on account of noise being caused, three out of the five tenants vacated the premises since they are unable to sleep during night hours. Studies of the children are also affected. Fourth respondent closes his shop around 9.00 PM and thereafter loading and unloading starts and continues till early hours. Petitioner alleged that the studies of his grand children are affected as they are not able to concentrate on their studies. Representations were stated to have been submitted to the District Collector, Nellore, Municipal Commissioner, Deputy Superintendent of Police, Roads and Buildings Department and Environmental Engineer, A.P. Pollution Control Board, without any result.

Fourth respondent though has admitted that he has established steel and cement retail shop adjacent to the premises of the petitioner, but denies that the area is a residential colony or that he is responsible for any nuisance. His case is that his wife purchased the site in the year 1999 and after obtaining licence from

Commercial Taxes Department, started steel and cement business. There is a 100 ft mini national high way just adjacent to the East of the shop and his wife has been running the shop since 28th October, 1999 bearing D.No.16-11-449 which is notified as a non-residential area. Previously, it is a residential area but on formation of national highway No.5, the same is notified as non-residential area. His wife has been paying municipal taxes to the Nellore Municipality wherein it is clearly mentioned that the premises is located in a non-residential area. He further says that there are a number of shops where commercial activities are being carried on in the locality and the adjacent premises, within a distance of 50 feet to the North, is Sairam Steels and Cement Company. To the further North is another steel and cement shop under the name and style of Balaji Steels and Cement. To the South also there is Venkata Raghavendra steel and cement shop and just adjacent to the petitioner's house on the Southern side, there is a Marine Acqua shop. To the further South, there is K.K. Earth Movers where bulldozers etc., will be given on hire. Respondent No.4 has alleged that writ petitioner rented out his ground floor to Saiteja Acqua Needs wherein business of acqua products is being carried on. Adjacent to the petitioner's house as well as the shop of the wife of respondent No.4, on both sides, there are a number of shops dealing with business and it is a commercial centre. Opposite the petitioner's house, there is an electrical sub station and petrol bunk. There is heavy traffic passing through National High Way No.5.

In the status report of the Pollution Control Board dated 19-10-2004 submitted after inspection of the site in the presence of the parties, it is stated that commercial shops have come up heavily in the locality. Thousands of motor vehicles are passing day and night. During the inspection, it was observed that all along Southern and Northern side of the petitioner's house and the respondent No.4 shop, commercial activity like steel trading shops, welding shops, acqua labs and marriage function halls have come up. According to the Pollution Control Board, there is no possibility to issue any direction under the relevant provisions of the environmental law and regulation of time for loading and unloading of heavy steel articles can only be done under the relevant provisions of the A.P. Municipal Act, Labour Act etc.

Learned counsel for the petitioner submits that it is not a commercial area but still a residential area.

Considering the facts as have been stated above, it is not a case which deserves to be taken up on writ jurisdiction side. The entire case made out by the petitioner is of nuisance and in case respondent No.4 is causing nuisance, nothing prevents the petitioner from taking out appropriate civil proceedings for appropriate relief and in the meanwhile there is nothing to prevent the petitioner from approaching the concerned municipal authorities pointing out the relevant provisions of law under which they can exercise their authority for regulating the time for loading and unloading of steel articles in case that is causing noise violating any of the provisions of law.

With leave and liberty granted to the petitioner, the petition is dismissed.

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DEVINDER GUPTA, CJ

10-2-2005

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B.SESHASAYANA REDDY, J

Tvr

To

1 The Superintendent of Police, Nellore.
2 The Environmental Engineer, A.P. Pollution Control Board, Nellore.
3 The Commissioner, Nellore Municipality, Nellore.
4 2 CCs to the Govt. Pleader for Home, High Court buildings,

Hyderabad (OUT).

5 2 CCs to the Govt. Pleader for Municipalities, High Court buildings,

Hyderabad (OUT).

6 2 CD copies.